MURAL DISPLAY AGREEMENT

This Agreement ("Agreement") is made and entered into as of the _____ day of _____, 2016, by and between **San Pedro Waterfront Arts District**, a non-profit corporation in San Pedro, CA (hereinafter called "Arts District"), and _____ _____ , (hereinafter called "Owner").

WHEREAS Arts District is a non-profit community organization that desires to display the uniqueness, civic pride, history and culture of San Pedro in a series of murals on buildings in the town of San Pedro; and

WHEREAS Owner is the property owner of property located at _____ _____ San Pedro, CA 90731 (hereinafter called "Property"); and

WHEREAS Owner recognizes that the purpose of the project is to improve community aesthetics while encouraging tourism and commerce in the city and agrees that such improvements is a benefit to San Pedro and to Owner; and

WHEREAS Arts District desires to paint or place artwork ("Mural") on the exterior wall of the Property; and

WHEREAS Owner consents to Arts District request to paint or place a mural on the Property and will allow reasonable access to said property to complete the installation of said mural; and

WHEREAS the nature of the project is such that it is necessary and desirable to enter into an agreement expressly setting forth the respective rights, duties and obligations between the parties under the terms and conditions as hereafter provided.

NOW THEREFORE, in consideration mutually agreed to and accepted by the parties, each agree to be legally bound as follows:

1) **Recitals.** The Recitals set forth above constitute part of this Agreement and are incorporated herein by this reference.

2) **Term.** The effective date of this Agreement shall be the date set forth above and shall continue for a period of five (5) years.

   a) Arts District may extend the term of this contract for an additional five (5) years by giving written notice to Owner no later than 90 days prior to the expiration of the contract term listed above.

   b) The total duration of this contract, including the exercise of any options under this clause, shall not exceed _____ years.

3) **License Fees.** Arts District shall not be obligated to pay a fee to Owner including license or use fees for the placement of the mural on Owner's Property.

4) **Mural to be displayed.**

a) Arts District shall provide for the execution of the Mural and be responsible for any costs associated with the installation of the Mural, including payment of fees to the artist that includes any scaffolding, paint and equipment necessary to complete the Mural.

b) The subject matter for the Mural and selection of the artist shall be the sole responsibility of the Arts District.

i) Owner shall be involved in discussion of the mural subject matter and artist selection but the ultimate decision shall be made by Arts District.

ii) Owner shall inform Arts District of its concerns regarding mural subject matter and artist selection within _____ days of receipt of such information by Arts District. Failure to express any concerns within the timeframe allowed shall be deemed consent to Arts District's selection and Owner will not be allowed any further objection.

c) Owner understands that upon completion of the artist's contract, the artwork copyright shall become the property of Arts District and not in any way be transferred to Owner so long as Arts District is maintaining the mural as discussed below.

i) Owner agrees that the placement of the copyrighted mural on the Property does not entitle Owner to use the artwork for any profit making or advertising purpose, except with prior written permission of Arts District.

ii) If the mural is used by a third party in a commercial aspect such that a fee is to be paid to either Owner or Arts District, all fees received shall be shared equally between Owner and Arts District.

(1) Owner and/or Arts District shall immediately notify the other party of any third party commercialization of the mural.

(2) Owner and Arts District shall not unreasonably withhold permission to a third party for its use of the mural for commercialization purposes.

(3) Any commercialization payments received by Owner and/or Arts District under the terms of this agreement shall be shared to the other party within 10 days of receipt of the payment by the third party.

d) Arts District and Owner agree to abide by all stipulations in the City of Los Angeles' Mural Ordinance # 182706, adopted by City Council on 12/10/13 incorporated to and made part of this agreement as Attachment A. Arts District intends to register the Mural with the City of LA and expects Owner to comply with all city regulations, agreements and covenants related to the maintenance of the building and the Mural.

5) **Maintenance of Mural.**

a) Arts District shall be responsible for all materials necessary to maintain, remove or restore the mural during the term of this agreement or any extension thereof.

b) Owner agrees to provide Arts District with reasonable access to the Property for such

work, so long as such assess does not interfere with Owner's business operations at the property.

c) The mural shall be properly maintained by Arts District at its expense until the contract is terminated or Arts District under its sole discretion, determines that it is no longer feasible to maintain the mural.

   i) Owner agrees that any refurbishment, repairs, maintenance or "touch up" of the Mural shall be undertaken only with the approval of and under the supervision of Arts District or its designated representative.

   ii) Owner agrees to notify Arts District in writing of any repairs that need to be completed to the mural.

   iii) Upon receipt of the written repairs request, the Arts District Board will review said request and if approved, agrees to complete repairs within 30 days of receiving written notice from Owner of the needed repairs.

6) **Abandonment by Arts District.** If Arts District fails to maintain the mural as required by the terms of this agreement, it is a material breach of this contract and shall be deemed to have abandoned the mural. Upon such determination of abandonment, the mural shall become the sole property of the Property Owner.

7) **Termination of this Agreement.**

   a) During the initial five year period and any extension periods, if the Property is sold, or the building on the Property is to be demolished or altered, or the mural otherwise interferes with Owners use of the Property, or for any reason Owner decides it no longer desires to have the mural on its wall, then Owner may cancel this agreement by providing six (6) months advance written notice of such cancellation to Arts District; provided, however, should such cancellation occur during the initial five year term, then Owner agrees to reimburse Arts District the sum of $50,000, which represents the original cost to Arts District for said Mural so that Arts District may re-create the mural in a different location.

   b) Arts District, in its sole discretion and upon six months written cancellation notice to Owner, may remove or paint out the Mural for any reason such an action is deemed necessary by the Board of Directors of Arts District.

      i) If Arts District terminates this agreement under this section of the contract, the property shall be restored to its original pre-mural condition.

8) **Display of Mural.** Owner agrees not to intentionally remove, paint out or damage the Mural during the term of this agreement.

   a) If Owner leases the Property, Owner agrees that Owner's tenant or lessee shall be informed of and shall honor the provisions on this agreement.

   b) If Owner sells or transfers the Property during the term hereof, Owner will either: (i) require the buyer/transferee to honor the terms hereof, (ii) inform the Buyer of their inherited obligations under this Agreement or (iii) cancel this agreement pursuant to Section 7 above.

c) If the building and/or mural is destroyed by fire, flood or acts of god, Owner shall be released from this agreement and may destroy or paint over the mural.

9) **Liability Insurance.** Arts District, or its contracted artist, shall provide liability insurance to cover any occurrences relating to the preparation, painting, or maintenance of the Mural, and Owner shall be named as an additional insured on such insurance.

10) **Property Damage.** Arts District and Owner agree that by installing its copyrighted mural to the property, Arts District shall not have any duty, obligation or responsibility to, or for Owner solely because of this agreement and the mural installation.

a) Arts District shall not be liable to Owner in any capacity for any damage to the property or Owner that was caused by another, third party because of the mural being installed on the property.

b) Arts District shall not be liable to Owner for any underlying condition or damage to the property or Owner that is beyond Arts District's control.

c) Arts District shall not be included or subrogated into any third party litigation against or by Owner because of the condition of the property.

11) **Disputes.** In the event of any litigation between Arts District and Owner arising out of this Agreement, said dispute shall be first submitted to mediation either in accordance with the rules of the American Arbitration Association or other mutually agreeable mediator under its Commercial Mediation Procedures before reporting to arbitration litigation, or some other dispute resolution procedure.

12) **Attorney Fees.** No attorney fees shall be awarded to the prevailing party attempting to enforce the terms of this agreement, either in Tort or Contract Law.

13) **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested to the following:

_____	_____
San Pedro Waterfront Arts District	Property Owner
_____	_____
Street Address	Street Address
_____	_____
City, State Zip	City, State Zip

14) **Construction.** This Agreement shall be governed and interpreted in accordance with the laws of the State of California. The waiver by any party hereto of a breach of any of the provisions of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

15) **Modification Assignment.** This instrument contains the entire Agreement of the parties and may not be changed except by written agreement duly executed by the parties hereto. The rights and obligations of the parties under this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

16) **Severability.** Each provision of this Agreement shall be considered severable. If for any reason any provision(s) herein are determined to be invalid or unenforceable, this Agreement shall be construed in all respects as though such invalid or unenforceable provisions were omitted, and such invalidity or unenforceability shall not impair or otherwise affect the validity of the other provisions of this Agreement. Moreover, the parties agree to replace such invalid provision with a substitute provision that will correspond to the original intent of the parties.

17) **Number of Agreements.** This Agreement may be executed in any number of counterparts, any one of which may be deemed original.

18) **Pronouns.** The use of any word in any gender shall be deemed to include any other gender and the use of any word in the singular shall be deemed to include the plural where the context requires.

19) **Headings.** The section headings used in this Agreement are for convenience only and are not to be controlling with respect to the contents thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date set forth above.

Witness: _____ By:

_____

XXXX – CEO
San Pedro Waterfront Arts District

Witness: _____ By:

_____

XXX – Owner

ATTACHMENT A

City of Los Angeles' Mural Ordinance # 182706

ORDINANCE NO. __18_2_7_0_6__

An ordinance amending Sections 14.4.2, 14.4.3 and 14.4.20 of the Los Angeles Municipal Code; and amending Sections 5.111.2 and 22.116 of, and adding Section 22.119 to, the Los Angeles Administrative Code to allow for the creation of new Original Art Murals and the preservation of Vintage Original Art Murals on private property.

THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:

Section 1. The definition of "Mural Sign"is deleted from Section 14.4.2 of the Los Angeles Municipal Code.'

Sec. 2. The following definitions are added to Section 14.4.2 of the Los Angeles Municipal Code in proper alphabetical order:

Original Art Mural. A one-of-a-kind, hand-painted, hand-tiled, or digitally printed image on the exterior wall of a building that does not contain any commercial message. For definition purposes, a commercial message is any message that advertises a business conducted, services rendered, or goods produced or sold.

Public Art Installation. A facility, amenity or project that does not contain any commercial message and which is either an "approved public arts project" as defined by Section 19.85.4 of the Los Angeles Administrative Code or approved pursuant to Section 91.107.4.6 of the Los Angeles Municipal Code. For definition purposes, a commercial message is any message that advertises a business conducted, services rendered, or goods produced or sold.

Vintage Original Art Mural. An Original Art Mural that existed prior to the operative date of this definition.

Sec. 3. Subsection E of Section 14.4.3 of the Los Angeles Municipal Code is deleted.

Sec. 4. Subdivision 10 of Subsection B of Section 14.4.4 of the Los Angeles Municipal Code is deleted.

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Sec. 5. Section 14.4.20 of the Los Angeles Municipal Code is amended to read as follows:

SEC. 14.4.20. ORIGINAL ART MURALS, VINTAGE ORIGINAL ART MURALS, AND PUBLIC ART INSTALLATIONS.

An Original Art Mural that conforms to the requirements of Section 22.119 of the Los Angeles Administrative Code is not considered a sign and therefore is not subject to the provisions of this Article or any other ordinance that regulates signs. Any supposed "mural" that does not conform to the requirements of Section 22.119 of the Los Angeles Administrative Code shall be considered a sign and subject to the provisions of this Article or any other ordinance that regulates signs and digital displays. A Public Art Installation registered pursuant to the requirements of Section 19.85.4 of the Los Angeles Administrative Code or the requirements of Section 91.107.4.6 of the Los Angeles Municipal Code is not a sign, but is subject to Section 14.4.4-E of this Article and any other applicable zoning and land use regulations set forth in the Los Angeles Municipal Code. A building permit from the Department of Building and Safety is required for a new hand-tiled or digitally printed Original Art Mural or any

Public Art Installation.

Severability. If any part, sentence, phrase, clause, term or word in Section 14.4.2 or Section 14.4.20 of this Code relating to Original Art Murals is declared invalid or unconstitutional by a valid court judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect the constitutionality or lawfulness of the remainder of this Code, the Los Angeles Administrative Code or any other City regulation regulating signage, billboards or Original Art Murals.

Sec. 6. Section 5.111.2 of the Los Angeles Administrative Code is amended to add a new Subsection (h) to read as follows:

(h) Fees charged for the registration of Original Art Murals, pursuant to Section 22.116(b) of the Los Angeles Administrative Code, shall be placed in the Fund and allocated for mural registration program implementation.

Sec. 7. Section 22.116 of the Los Angeles Administrative Code is amended to read as follows:

Sec. 22.116. Fees.

(a) Schedule of Fees for Application for Architectural Approval. As required by Section 22.109 of this Code, each application for approval of the design or location of any arch, bridge, structure, or approach belonging to any private individual or corporation by the Board of Cultural Affairs Commissioners shall be accompanied by the payment of a fee in accordance with the following schedule:

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Total Valuation of Project
Fee
From To
$0.00 $1,500.00 $60.00
1,500.01 10,000,00 80,00
Sss10,OOO.01 25,000,00 100.00
25,000,01 50,000.00 120.00
50,000.01 150,000,00 140.00
150,000.01 250,000.00 160.00
250,000.01 500,000.00 200,00
500,000.01 1,000,000.00 300.00
1,000,000,01 Over 400.00

(b) Fee For New Mural Registration. As required by Section 22.119 of this Code, each application for registration with the Department of Cultural Affairs of an Original Art Mural on private property shall be accompanied by the payment of a $60.00 fee. Monies collected from each application for mural registration shall be deposited into the Cultural Affairs Department Trust Fund, as established by Section 5.111.2 of the Los Angeles Administrative Code, for mural registration program implementation,

Sec, 8. A new Section 22.119 of the Los Angeles Administrative Code is added to read as follows:

Sec. 22.119. Original Art Murals on Private Property.

(a) Purposes.

(1) These regulations relating to Original Art Murals in the City of Los Angeles further the following purposes: (1) encouraging artistic expression; (2) fostering a sense of pride; (3) preventing vandalism at mural sites through the installation of murals that vandals are reluctant to disturb; and (4) preserving existing murals that are a valued part of the history of the City of Los Angeles.

(2) The City wishes to encourage the installation of murals and, at the same time, prevent the proliferation of off-site commercial signs. Therefore, the City's mural regulations exclude commercial advertising on murals to prevent the installation of the equivalent of an off-site commercial sign on a mural. This restriction on commercial advertising is intended to work in tandem with and help preserve the citywide ban on off-site commercial signs set forth in Section 14.4.4
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of the Los Angeles Municipal Code. Both the ban and the exclusion of commercial advertising on murals are supported by the United States Supreme Court's ruling in *Metromedia, Inc.* v, *City* of *San Diego,* 453 U.S. 490 (1981). In *Metromedia,* the Supreme Court ruled that the only reasonable way that cities can stop the proliferation of off-site commercial signs is to ban them. The Supreme Court also ruled that cities can carve out exemptions to such a ban for noncommercial signs and on-site commercial signs.

(3) These mural regulations also promote public safety and welfare by regulating such displays in keeping with the following objectives:

(i) That the design, construction, installation, repair and maintenance of such displays will not interfere with traffic safety or otherwise endanger public safety.

(ii) That the regulations will provide reasonable protection to the visual environment by controlling the size, height, spacing and location of such displays.

(iii) That the public will enjoy the aesthetic benefits of being able to view such displays in numbers and sizes that are reasonably and appropriately regulated without having to endure visual blight and traffic safety impacts that would be caused by such displays that are not reasonably and appropriately regulated.

(iv) That consideration will be given to equalizing the opportunity for messages to be displayed.

(v) That adequacy of message opportunity will be available to sign users without dominating the visual appearance of the area.

(vi) That the regulations will conform to judicial decisions, thereby limiting further costly litigation and facilitating enforcement of these regulations.

(vii) To provide registration requirements and regulations for Original Art Murals as defined in Section 14.4.2 of the Los Angeles Municipal Code.

(b) **Original Art Mural Registration.**

(1) **Authority.** The Department of Cultural Affairs shall have the authority to determine that an application for an Original Art Mural or Vintage Original Art Mural meets all of the applicable registration requirements as established in the Mural Ordinance Administrative Rules.
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(2) Administrative Rules. The Department of Cultural Affairs is authorized and directed to adopt Mural Ordinance Administrative Rules implementing this section.

(3) Neighborhood Involvement Requirement. The Mural Ordinance Administrative Rules to be adopted by the Department of Cultural Affairs shall include a neighborhood involvement requirement. Specifically, the rules shall include a requirement that an applicant for mural approval send notice of that

application to the Neighborhood Council which has jurisdiction over the area of the City in which the proposed mural will be installed at least 45 days prior to the Department registering the mural. No mural shall be registered until the applicant certifies that he or she has completed this neighborhood involvement requirement. This is a procedural requirement only, and the General Manager shall at all times retain sole authority to approve or deny an application for a mural based on the criteria in Section 22.119 of the Los Angeles Administrative Code and any Mural Ordinance Administrative Rules promulgated by the Department of Cultural Affairs. Further, in no event will registration of a mural be granted or denied based upon the content of the mural.

(4) Covenant. In connection with the installation of a new Original Art Mural, the applicant shall be required to record a covenant with the Office of the County Recorder and the Department of Cultural Affairs. The covenant shall require that the mural comply at all times with all provisions of the Original Art Mural Regulations specified in Subsection (b) of this Section 22.119. In addition, the covenant shall remain in force for as long as the mural exists.

(5) Change of Ownership. Upon a change of ownership of the property to which an Original Art Mural is affixed, a new owner may, at the owner's election and without the need for permission from the Department of Cultural Affairs, de-register the mural with that department and terminate the covenant.

(c) Grandfathering of Vintage Original Art Murals. Any Vintage Original Art Mural installed prior to the effective date of this section, shall have legal nonconforming status and, notwithstanding any provision of this Section 22.119 to the contrary, not require registration under this Section 22.119. But a Vintage Original Art Mural which has not gained legal nonconforming status through law other than this Section 22.119 cannot qualify for legal nonconforming status under this Section 22.119 if it consists or contains any of the following: electrical or mechanical components, or changing images (moving structural elements, flashing or sequential lights, lighting elements, or other automated methods that result in movement, the appearance of movement, or change of mural image or message, not including static illumination turned off and back on not more than once every 24 hours).

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(d) Original Art Mural Regulations. An Original Art Mural that meets all of the following requirements will be allowed upon satisfaction of the applicable registration procedures:

(1) The mural shall remain in place, without alteration, for a minimum period of two-years. "Alterations" include any change to a permitted mural, including, but not limited to, any change to the image(s), materials, colors or size of the permitted mural. "Alteration" does not include naturally occurring changes to the mural caused by exposure to the elements or the passage of time. Minor changes to the permitted mural that result from the maintenance or repair of the mural shall not constitute an "alteration." Such minor changes may include slight an unintended deviations from the original image, colors, or materials that occur when the permitted mural is repaired due to the passage of time or as a result of vandalism. A mural may be removed within the first two years of the date of registration under the following circumstances:

(i) the property on which the mural is located is sold; or

(ii) the structure or property is substantially remodeled or altered in a way that precludes continuance of the mural; or

(iii) the property undergoes a change of use authorized by the

Department of Building and Safety.
(iv) the owner of a mural may request permission from the Department of Cultural Affairs to remove a mural prior to the expiration of the two year period, which the Department may grant upon making a finding that the continued maintenance of the mural is not feasible and that the early removal of the mural is not in furtherance of off-site commercial advertising.
(2) No part of a mural shall exceed the height of the structure to which it is tiled, painted or affixed.
(3) No part of a mural shall extend more than six (6) inches from the plane of the wall upon which it is tiled, painted or affixed.
(4) No part of a mural shall exceed a height of 100 feet above grade.
(5) No mural may consist of, or contain, electrical or mechanical components, or changing images (moving structural elements, flashing or sequential lights, lighting elements, or other automated methods that result in movement, the appearance of movement, or change of mural image or message, not including static illumination turned off and back on not more than once every 24 hours).
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(6) No mural shall be placed over the exterior surface of any building opening, including, but not limited to, windows, doors, and vents.
(7) No mural shall be placed on a lot that is improved with only one single-family residential structure and accessory structures.
(8) No mural shall be arranged and illuminated in a manner that will produce a light intensity of greater than three foot candles above ambient lighting, as measured at the property line of the nearest residentially zoned property.
(9) Digitally printed image murals shall receive approval of both the Los Angeles Fire Department and the Department of Building and Safety.
(e) **Severability.** If any part, sentence, phrase, clause, term, or word of this Section 22.119 is declared invalid or unconstitutional by a valid court judgment or decree of any court of competent jurisdiction, the declaration of such invalidity or unconstitutionality shall not affect the constitutionality or lawfulness of the remainder of this Administrative Code, the Los Angeles Municipal Code, or any other City regulation regulating signage, billboards, or Original Art Murals.
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Sec. 9. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.
I ~ereby certify that the foregoing ordinance was introduced at the meeting of the Council of the CIty of Los Angeles AUG 2 8 2013 ,and was passed at its meeting of SEP 42m~
HOLLY L. WOLCOTT, Interim City Clerk
Deputy
Mayor
Approved _
Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney
By, KENNETH T. ONG '
Deputy City Attorney
Pursuant to Charter Section 559, I
disapprove this ordinance on behalf of the
City Planning Commission and recommend
that it not be adopted .....

August J.J. 2013

Date
See attached report.
Director of Planning
File No(s). CF Nos. 08-0515. 08-0530, 08-1233 and 11-0923
M:\Real Prop_Env_Land Use\Land Use\Kenneth Fong\Mural Sign Ordinance\City Atty Rpt and Final Ordinance\Mural Ordinance City Attorney FINAL VERSION B (7 30 2013).docx